

1 Jacob L. Houmand, Esq. (NV Bar No. 12781)
 2 Email: jhoumand@houmandlaw.com
 3 Bradley G. Sims, Esq. (NV Bar No. 11713)
 4 Email: bsims@houmandlaw.com
 5 HOUMAND LAW FIRM, LTD.
 6 9205 West Russell Road, Building 3, Suite 240
 7 Las Vegas, NV 89148
 8 Telephone: 702/720-3370
 9 Facsimile: 702/720-3371

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10 *General Bankruptcy Counsel for Lenard Schwartzer, Chapter 7 Trustee*

11 **UNITED STATES BANKRUPTCY COURT**

12 **DISTRICT OF NEVADA**

13 In re:
 14 SIX STAR CLEANING AND CARPET
 15 SERVICES, Inc.,
 16 Debtor.

17 Case No. BK-S-13-18735-MKN
 18 Chapter 7

19 **REPLY TO RESPONSE TO**
APPLICATION TO EMPLOY PRAEMIA
LAW, PLLC AS SPECIAL LITIGATION
COUNSEL FOR LENARD
SCHWARTZER, CHAPTER 7 TRUSTEE,
PURSUANT TO 11 U.S.C. §§ 327(e) AND
328(a) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2014

20 Date of Hearing: June 9, 2021
 21 Time of Hearing: 11:00 a.m.
 22 Place: Courtroom No. 2, Third Floor
 23 Foley Federal Building
 24 300 Las Vegas Blvd., S.
 25 Las Vegas, NV 89101

26 Judge: Honorable Mike K. Nakagawa¹

27 Lenard Schwartzer (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-
 28 captioned bankruptcy case, by and through his counsel of record, Jacob L. Houmand, Esq. and
 Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Reply to Response to*
Application to Employ Praemia Law, PLLC As Special Litigation Counsel for Lenard Schwartzer,

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1 *Chapter 7 Trustee, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Federal Rule of Bankruptcy*
 2 *Procedure 2014* (the “Reply”).

3 The Reply is based on the following Memorandum of Points and Authorities, the
 4 pleadings and papers on file herein, and any argument that may be entertained at the hearing on
 5 the *Application to Employ Praemia Law, PLLC As Special Litigation Counsel for Lenard*
 6 *Schwartzzer, Chapter 7 Trustee, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Federal Rule of*
 7 *Bankruptcy Procedure 2014* [ECF No. 313] (the “Application”).²

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 The Application seeks authorizing to employ Praemia Law, PLLC (“Praemia”) as special
 11 litigation counsel for the Trustee in the litigation captioned *Six Star Cleaning and Carpet*
 12 *Services, Inc. et al. v. Laborers International Union of North America Local No. 872 et al.* (Case
 13 No. 2:11-cv-00524-LDG-CWH) that is pending in the United States District Court for the District
 14 of Nevada (the “District Court Action”). The defendants in the District Court Action are Laborers
 15 International Union of North America Local No. 872, Laborers International Union of North
 16 America Local No. 702, and Tommy White (collectively, the “Union”).

17 On May 11, 2021, the Trustees of the Construction Industry and Laborers Joint Trust
 18 Funds (the “Trust Funds”) filed a *Response to Application to Employ Praemia Law, PLLC As*
 19 *Special Litigation Counsel for Lenard Schwartzzer, Chapter 7 Trustee* [ECF No. 319] (the
 20 “Response”) that opposes the employment of Praemia on the basis that the contingency fee
 21 requested is “likely unreasonable” and that the Trustee should stop litigating the District Court
 22 Action because it is been pending for more than a decade. As an initial matter, the Trust Funds
 23 are affiliated with the Union. It is unsurprising that the Trust Funds would not want the Trustee to
 24 continue litigation against an affiliated entity. The contingency fee requested by Praemia is also
 25 reasonable considering the complexity of the litigation remaining in the District Court Action. If

26 _____
 27 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
 28 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of Evidence 201, incorporated by reference by FRBP 9017.

1 the District Court grants the *Motion to Vacate Arbitration Award* (9 U.S.C. § 10) and
 2 *Memorandum of Points and Authorities* (the “Motion to Vacate”) that was filed by the Trustee
 3 then there is a possibility that the parties may need to participate in another arbitration. The
 4 prosecution of another arbitration and motion practice in the U.S. District Court involving
 5 employment law will require the assistance of special counsel. Praemia has extensive experience
 6 with employment law and has agreed to represent the Debtor’s bankruptcy estate on a
 7 contingency fee basis. For these reasons, the Court should overrule the objections raised in the
 8 Response and approve the employment of Praemia.

9 **II. LEGAL ARGUMENT**

10 **A. Praemia Is Disinterested and the Proposed Terms of Its Employment Are
 11 Reasonable**

12 Section 327 governs the trustee's employment of attorneys and other professionals to
 13 represent or aid the trustee in carrying out his or her duties. 3 Collier on Bankruptcy ¶ 327.01
 14 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev.2007). Section 327(e) authorizes the
 15 trustee to employ a professional for a specified purpose. Unlike Section 327(a), Section 327(e)
 16 does not require disinterestedness. *Film Ventures Int'l, Inc. v. Asher (In re Film Ventures Int'l,
 17 Inc.)*, 75 B.R. 250, 252 (9th Cir.BAP1987). Rather, Section 327(e) only requires that the
 18 employment of an attorney be in the best interest of the estate and that the attorney not represent
 19 or hold an interest adverse to the debtor or the estate with respect to the matter on which the
 20 attorney is to be employed.

21 Here, there is no dispute that Praemia holds no interest adverse to the Debtor's bankruptcy
 22 estate. Praemia has the expertise required to assist the Trustee as his special counsel. Because of
 23 the contingency fee arrangement, Praemia's employment will not dilute the assets of the estate,
 24 and Praemia will only be compensated in the event it successfully recovers funds for the Debtor's
 25 bankruptcy estate. Accordingly, employment is proper under Section 327(e). The court in the
 26 District Court Action has also ordered the Trustee to obtain substitute counsel following the
 27 withdrawal of his prior special counsel. The retention of Praemia will comply with this order and

1 will prevent the dismissal of the District Court Action, which would only prejudice the Debtor's
 2 creditors.

3 The Response does not object specifically to the employment, but rather appears to take
 4 issue with the proposed contingency fee, and requests five business days to respond to any request
 5 for compensation filed by Praemia.

6 If the requirements for employment under Section 327 are met, Section 328(a) governs the
 7 terms of compensation. *In re Rosenblum*, No. 18-17155-MKN, 2019 WL 5874652 (Bankr. D.
 8 Nev. Mar. 15, 2019). Section 328(a) specifically contemplates that the Trustee may employ a
 9 professional to be compensated on a contingency basis and provides:

10 (a) The trustee, or a committee appointed under section 1102 of this
 11 title, with the court's approval, may employ or authorize the
 12 employment of a professional person under section 327 or 1103 of
 13 this title, as the case may be, on any reasonable terms and
 14 conditions of employment, including on a retainer, *on an hourly
 15 basis*, on a fixed or percentage fee basis, or on a *contingent fee
 16 basis*. Notwithstanding such terms and conditions, the court may
 17 allow compensation different from the compensation provided
 18 under such terms and conditions after the conclusion of such
 19 employment, if such terms and conditions prove to have been
 20 improvident in light of developments not capable of being
 21 anticipated at the time of the fixing of such terms and conditions.

22 11 U.S.C. § 328(a).

23 As noted by the Trust Funds, the District Court Action has been pending for almost a
 24 decade and a key aspect of the litigation lies concerns the outcome of the Motion to Vacate. *See*
 25 *Response To Trustees Interim Statement* [ECF No. 312]. A fifty percent (50%) contingency fee is
 26 entirely reasonable under the circumstances given the work and expertise required for the District
 27 Court Action and the possibility that there may not be a recovery. As such, the requested
 28 contingency fee agreement meets the "any reasonable terms and conditions" standard set by
 Section 328(a) and should be approved. Importantly, a contingency fee is in the best interests of
 creditors because Praemia will only be compensated in the event of a successful outcome and will
 not dilute any of the assets currently held by the Trustee. Moreover, the Trustee is only holding
 funds in the amount of \$12,486.41, which will not satisfy existing Chapter 7 administrative

1 expenses. The only possibility for a distribution to the Debtor's creditors lies in a successful
2 outcome in the District Court Action. Accordingly, the employment of Praemia is in the best
3 interests of creditors and should be approved.

4 **B. Any Compensation In Favor of Praemia Is Subject to Court Approval Pursuant to
5 Sections 330 and 331**

6 The Response includes a request that the Trust Funds have "5 business days to respond to
7 any application to compensate Special Litigation Counsel, should the Court decide to grant the
8 instant Application." This argument is unnecessary because the Application clearly states that
9 any attorneys' fees and expenses in favor of Praemia will only be allowed after this Court has
10 considered an application for compensation filed by Praemia pursuant to Section 330 and 331.
11 The Trust Funds will also have more than five business days to respond to any such request for
12 compensation because the Local Rules provide that the deadline for any party to file a written
13 opposition is fourteen (14) days preceding the hearing date.

14 **III. CONCLUSION**

15 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
16 (i) overruling the objections raised in the Response; (ii) granting the Application and authorizing
17 the Trustee to employ Praemia as special litigation counsel on the terms set forth in the
18 Application; and (iii) for such other and further relief as is just and proper.

19 Dated this 2nd day of June, 2021.

20 **HOUMAND LAW FIRM, LTD.**

21 By: /s/ Jacob L. Houmand
22 Jacob L. Houmand, Esq. (NV Bar No. 12781)
23 Bradley G. Sims, Esq. (NV Bar No. 11713)
24 9205 West Russell Road, Building 3, Suite 240
25 Las Vegas, NV 89148
Telephone: 702/720-3370
Facsimile: 702/720-3371

26 *General Bankruptcy Counsel for Lenard
27 Schwartz, Chapter 7 Trustee*